SINGAPORE REPORTS

Ramli bin Awang v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) – CRIMINAL APPEAL NO 17 OF 1987
WEE CHONG JIN CJ, CHUA J AND GRIMBERG JC
25 OCTOBER 1988

Criminal Law – Murder – Conviction of – Appeal against – Whether trial judges were wrong in admitting appellant's statement recorded under s 121(6) of the Criminal Procedure Code (Cap 113, 1970 Ed) – Whether trial judges' finding that appellant had common intention with accomplice was justified – No basis for disturbing findings of fact – Penal Code (Cap 103, 1970 Ed), s 302

The appellant was convicted by the High Court on a charge of murder and sentenced to death. At his trial, the appellant admitted that he and R planned to steal oil from a barge upon which the deceased was employed as a watchman. In his statement recorded under s 121(6) of the Criminal Procedure Code (Cap 113, 1970 Ed), he said that while he and R were stealing the oil, the deceased woke up and it was R who then suggested that the deceased be killed. He appealed against the conviction to the Court of Criminal Appeal on the grounds that: (a) the trial judges were wrong in holding that the appellant's s 121(6) statement was admissible in that there were no threats, promises or inducements on the part of the investigating officers; (b) the appellant had not formed a common intention with R to murder the deceased, as the appellant's intention was, from the outset, to steal his employer's oil and that this intention did not extend at any time to an intention to kill the deceased.

Held, dismissing the appeal:

(1) It was clear from the trial judges' grounds of decision that they gave careful consideration to the evidence relating to the basis upon which it was sought to exclude the appellant's s 121(6) statement. There was no basis whatsoever for disturbing the findings of fact on the part of the learned trial judges. The appellant accordingly failed on his first ground of appeal.

(2) The trial judges had in mind that common intention was to be inferred from surrounding circumstances and the conduct of the parties. There was no basis upon which the court could conclude that the learned trial judges' finding as to the existence of common intention was unjustified. There was ample evidence to support it. The appellant's second ground of appeal therefore failed.

Legislation referred to
Criminal Procedure Code (Cap 113, 1970 Ed) s 121(6)
Penal Code (Cap 103, 1970 Ed) ss 34, 302

Anandan Subhas for the appellant.
Jennifer Marie (Ms) for the Public Prosecutor.

Cur Adv Vult

Grimberg JC (delivering the judgment of the court): The appellant, Ramli bin Awang, was tried and convicted by the High Court on a charge of murder. The charge was as follows:

> That you, Ramli Bin Awang, are charged that between 1.00 pm on 27 October 1984 and 11.45 am on 28 October 1984 on board the bunker barge SB 167G anchored at the Eastern Anchorage, Singapore, together with one Rohani and in furtherance of the common intention of both of you committed murder by causing the death of one Tan Jae Tuang, and you have thereby committed an offence punishable under s 302 read with s 34 of the Penal Code (Cap 103).

The appellant was sentenced to death. He appealed against sentence and conviction. His appeal came before us and we dismissed it. These are our reasons for having done so.

On the morning of 30 October 1984, the body of Tan Jae Tuang ('the deceased'), who was aged about 71, was recovered from the sea at the western petroleum anchorage. He was found to have been strangled.

The deceased had been employed by Hong Lam Marine Pte Ltd ('Hang Lam') as a watchman aboard one of its bunkering barges, SB 167G.

The appellant was also an employee of Hong Lam. He was a steersman. On 30 October 1984, he was arrested and charged in the terms to which we have referred, with the murder of the deceased. Between 7.45 pm and 10.35 pm that night, a statement was recorded from the appellant under the provisions of s 121(6) of the Criminal Procedure Code.

At his trial, the appellant admitted that he and Rohani, the person named in the charge and referred to at the trial as 'Ronnie', planned to steal oil from barge SB 167G upon which the deceased was employed as watchman. The appellant put four sleeping tablets into the deceased's coffee at about 7.00 pm on the night of 27 October 1984, in order to put the deceased to sleep, so that he and Ronnie could proceed with the planned theft.

In the event, the potion failed to put the deceased to sleep for long enough. The appellant reported to Ronnie that the deceased had woken up, whereupon Ronnie told him that as they had been seen by the deceased, he must be killed by strangling. The appellant disagreed and tried instead to persuade the deceased to participate in the theft. While his conversation with the deceased was going on, Ronnie came upon the deceased from behind, with a towel, and attempted to strangle him. The appellant said that he was shocked and frightened and that he did nothing.

The deceased fell to the deck of the barge, and Ronnie and the appellant carried him to the toilet, the appellant being under the impression the deceased had 'fainted'.

For some two hours after the deceased was placed in the toilet, oil was pumped from barge SB 167G onto another vessel in pursuance of the theft. When this operation was concluded, Ronnie went aft and returned to

inform the appellant that the deceased was 'still alive'. Ronnie asked the appellant for a rope, and the appellant handed him one. The appellant said that he did not ask Ronnie why he wanted the rope, thinking that Ronnie intended to tie the deceased with it. Ronnie went to the toilet, after which the appellant heard, coming from the toilet, the 'sound of a person in trouble'. He saw one of the deceased's legs emerge from the toilet and he pushed it back in with his foot, closed the door and leaned on it.

Subsequently, the appellant assisted Ronnie to pull the deceased out of the toilet. He saw the rope he had supplied to Ronnie round the deceased's neck. The appellant and Ronnie dragged the deceased's body to the edge of the barge and Ronnie pushed the deceased into the sea.

In answer to a question from his counsel as to whether he would have handed the rope to Ronnie had he known that Ronnie was going to use it to strangle the deceased, the appellant answered: 'No.' He said that at no time had he planned with Ronnie to murder the deceased. He admitted that in due course the oil he and Ronnie had stolen was sold and that he had collected his share of the proceeds.

The material part of the accused's s 121(6) statement was in the following terms:

> ... I went back to the barge SB 167G ... and met Ronnie who told me that the deceased had woke up. I looked at the deceased and confirmed that he had woke up. The deceased knew of our presence on the barge but he did nothing. I told Ronnie to abandon the plan of stealing the oil from the barge. Ronnie advised me to proceed with the plan of stealing the oil. He told me that after all the deceased had seen us and would report the matter. He then suggested that we kill the deceased by strangling him to death. I was against the idea and told Ronnie that if he wanted to kill the deceased, he could go on with it and as for me, I do not have the heart to do so. I then approached the deceased and sought his permission to allow us to steal the oil. The deceased refused to cooperate with us. Whilst I was talking to the deceased coaxing him to work with us by allowing us to steal the oil, Ronnie came with a towel on his hand. He came from behind and used the towel to strangle the deceased who was sitting next to me. I just looked on and did not interfere. I also did not make any attempt to stop Ronnie from strangling the deceased. When the deceased had weakened and seemed fainted, Ronnie asked me to help him carry the deceased into the toilet on the barge. I proceeded to assist him in carrying the deceased into the toilet. After which I locked the deceased inside the toilet from the outside by just turning the wooden stopper of the door. Minutes later, the tug-boat 'Satrya Madura' arrived alongside next to the barge SB 167G. I then proceeded to steal the oil from the barge by transferring the oil in the barge SB 167G to the tug-boat using the pump on the barge which worked by the generator. We emptied three tanks of oil from the barge SB 167G. They were tank numbers 2, 3 and 4. As for tank number 4 we only emptied half the tank. The transfer of oil was completed at about 4.00 am on Sunday 28 October 1984. It took us two hours for the job which started at about 2.00 am. After which Ronnie went back to the toilet to check on the deceased. He told me that the deceased was still alive and asked for a rope. I then took a rope about three metres long from the deck and gave it to Ronnie who was guarding the deceased at the toilet. He took the rope and went inside the toilet to use it to strangle the deceased. I closed the toilet door from outside as soon as Ronnie entered and stood next to the door to keep watch. I heard the sound of the deceased struggling and there was a time when the deceased kicked the door open and I kicked his leg in and closed back the door. About ten minutes, there was silence and Ronnie came out. He told me to carry the deceased onto my boat and threw him far away from the scene. I refused. I had then saw the deceased lying in the toilet. He was motionless and there was a rope around his neck and his legs were tied by the same rope. He then suggested that we pulled him out and threw him into the sea. I then helped him to pull the deceased out of the toilet by pulling one of his legs with Ronnie pulling the other one leg, and placed him on the verge of the deck. Ronnie subsequently pushed the deceased whom I believed was already dead, into the sea with his leg. I saw the deceased body sank.

The admissibility of this statement was challenged on the grounds that it was not voluntary. It was asserted on behalf of the appellant that the statement had been obtained by threats, promises or inducements on the part of investigating officers. In the first place, it was contended that S/I Chew Keng Gee, in the course of questioning the appellant between about 11.35 am and 1.35 pm on 30 October 1984, told the appellant that his body was 'fit for hanging'; secondly, it was said that ASP S Suppiah had threatened the appellant at the CID later the same afternoon by telling him that if he did not speak the truth his limbs would be broken; and finally it was urged upon the learned trial judges that the appellant's statement was induced by Inspector Samadi bin Aman, during an interview which took place that afternoon when, it was alleged, Inspector Samadi told the appellant that if he cooperated, the charges against him would not be severe, and that he would go to prison for between six and seven years, at the most.

The learned trial judges determined, at the conclusion of the voire-dire, that the appellant's statement was admissible. The first ground of the appeal, which was not strenuously argued, was that they were wrong in so holding.

It is clear from their grounds of decision that the learned trial judges gave careful consideration to the evidence relating to the basis upon which it was sought to exclude the appellant's s 121(6) statement. They found, as matters of fact, that S/I Chew did not make the remark alleged of him; that ASP Suppiah was not even present in the CID building when he was alleged to have threatened the appellant; and that, given the evidence, it would not have been possible for Inspector Samadi to have interviewed the appellant at the time, or for the period, asserted by the appellant, in order to have held out the alleged inducement.

We saw no basis whatsoever for disturbing these findings of fact on the part of the learned trial judges, and the appellant accordingly failed on his first ground of appeal.

The only other ground upon which it was sought to upset the conviction was that the appellant had not formed a common intention, with Ronnie, to murder the deceased. Counsel for the appellant conceded that, whether or not a common intention was formed was a matter of fact for determination by the trial judges. However, he argued that the proper finding would have been that the appellant's intention was from the outset, to steal his employers' oil, and no more, and that this intention did not extend at any time to an intention to kill the deceased. The trial judges had therefore been wrong to conclude, on the evidence, that a common intention to murder had been formed.

We were unable to agree. The trial judges had in mind that common intention is to be inferred from surrounding circumstances, and the conduct of the parties. While accepting that when the appellant had sought to drug the deceased he had done so only to facilitate the theft of the oil, they disbelieved the appellant when he said that he stood by, for between five and six minutes, during Ronnie's first attempt to strangle the deceased with a towel, because he was shocked and frightened. The trial judges concluded, as they were entitled to on the evidence, that the appellant also wanted the deceased dead.

Were that not enough, the appellant had handed to Ronnie the rope that eventually dispatched the deceased. Although he claimed in his evidence that he did not know what Ronnie wanted the rope for, and later, that he thought Ronnie intended to use it to tie the hands and feet of the deceased, his evidence, which on the face of the grounds of decision was carefully weighed, was disbelieved. The judges took account of the fact that after Ronnie entered the toilet with the rope, the appellant closed the toilet door and braced himself against it because the wooden latch had become detached. The appellant heard the struggling inside, followed by a silence for about ten minutes before he was asked by Ronnie to stand clear of the door so that they could both dispose of the body. The judges bore in mind that, in his s 121(6) statement, the appellant had said that, upon handing Ronnie the rope: 'He (Ronnie) took the rope and went inside the toilet to use it to strangle the deceased'.

In the event, the learned trial judges concluded beyond reasonable doubt, that the appellant had handed Ronnie the rope in order for him to strangle the deceased. A common intention had arisen between them to murder the deceased when Ronnie had attempted earlier to strangle the deceased with the towel. That attempt having failed, and the oil having been successfully pumped out of SB 167G, the appellant had actively assisted Ronnie to murder the deceased, and dispose of his body overboard.

There was no basis upon which we could possibly conclude that the learned trial judges' finding as to the existence of common intention was unjustified. There was ample evidence to support it. The appellant's second ground of appeal, like his first, therefore failed.

Appeal dismissed.

Solicitors: *MPD Nair & Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Tsang Yuk Chung

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 31 OF 1986
CHAN SEK KEONG AND CHUA JJ
20 SEPTEMBER 1988

Criminal Law – Murder – Intention – Injury intended sufficient in the ordinary course of nature to cause death – Whether there was grave and sudden provocation – Sudden fight – Penal Code (Cap 103, 1970 Ed), ss 300 & 302

Criminal Procedure – Cautioned statement – Admissibility of – Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6)

In this case the accused was charged with murder under s 302 of the Penal Code. The evidence showed that there had been previous quarrels between the accused and the deceased who were both working on a ship. On the morning of the day of the incident there had been a quarrel between them and the deceased had scolded, threatened and chased the accused with a knife. The deceased did not retaliate immediately. Later in the day the accused went to his cabin and brought a knife to the pantry to stab the deceased. There was a struggle between them as the deceased was trying to prevent the accused from stabbing him. The accused stabbed the deceased causing the injuries which led to his death. A statement was recorded from the accused and after a trial within a trial this was admitted in evidence. It was contended on behalf of the accused (a) that the defence had created a reasonable doubt as to whether the accused had intended to kill the deceased or to cause him injury as was sufficient in the ordinary course of nature to cause death, (b) that the deceased was deprived of the power of self-control by grave and sudden provocation when he caused the death of the deceased who gave the provocation, and (c) that the accused had killed the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Held, convicting the accused:

(1) Having regard to the evidence in the trial within a trial, the court was satisfied that the charge and the warning had been read and explained to the accused and/or at any rate that he understood both the charge and the warning. It was clear from the accused's own testimony that his real complaint was that certain parts of his cautioned statement had not been recorded accurately.